

REMARKS

Claims 1-14 were examined and reported in the Office Action. Claims 1-4 are rejected. Claim 3 is canceled. Claims 1 and 4 are amended. Claims 1-2 and 4-14 remain.

Applicant requests reconsideration of the application in view of the following remarks.

I. Disclosure Objections

It is asserted in the Office Action that the disclosure is objected to for informalities. Applicant submits replacement sheets for figures 12-18 to overcome the informal objections. Approval is respectfully requested.

II. 35 U.S.C. § 102(b)

It is asserted in the Office Action that claims 1 and 2 are rejected under 35 U.S.C. § 102(b), as being anticipated by U. S. Patent No. 5,754,947 issued to Tanabe et al ("Tanabe"). Applicant respectfully traverses the aforementioned rejection for the following reasons.

According to MPEP §2131,

'[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.' (Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). 'The identical invention must be shown in as complete detail as is contained in the ... claim.' (Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, *i.e.*, identity of terminology is not required. (In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)).

Tanabe discloses a method for radio communication in a distributed network. Tanabe, however, does not teach, disclose or suggest Applicant's amended claim 1 limitations of "the ACK message includes a payload field representing the first and last sequence numbers successfully received in succession among the MPDUs transmitted in the previous frame."

Therefore, since Tanabe does not teach, disclose or suggest all of Applicant's amended claim 1 limitations, Applicant respectfully asserts that a *prima facie* rejection under 35 U.S.C. § 102(b) has not been adequately set forth relative to Tanabe. Thus, Applicant's amended claim 1 is not anticipated by Tanabe. Additionally, the claim that directly depends on claim 1, namely claim 2, is also not anticipated by Tanabe for the same reason.

Accordingly, withdrawal of the 35 U.S.C. § 102(b) rejection for claims 1 and 2 is respectfully requested.

II. 35 U.S.C. § 103(a)

It is asserted in the Office Action that claims 3 and 4 are rejected in the Office Action under 35 U.S.C. § 103(a), as being unpatentable over Tanabe in view of U. S. Patent No. 6,934,752 issued to Gubbi ("Gubbi"). Applicant respectfully traverses the aforementioned rejection for the following reasons.

According to MPEP §2142

[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. __, __, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that 'rejections on obviousness cannot be sustained with mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.' *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at __, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).

Further, according to MPEP §2143, "[T]he Supreme Court in *KSR International Co. v. Teleflex, Inc.* 550 U.S. __, __, 82 USPQ2d 1395-1397 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in *Graham*." And, according to MPEP §2143.01, [o]bviousness can be established by combining or modifying the teachings of the prior

art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006). Further, “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art.” *KSR International Co. v. Teleflex, Inc.* 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007).

Additionally, according to MPEP §2143

[a] statement that modification of the prior art to meet the claimed invention would have been “well within the ordinary skill of the art at the time the claimed invention was made” because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Pat. App. & Inter. 1993).

It is asserted in the Office Action that Gubbi discloses “the ACK message includes a payload field representing the first and last sequence numbers successfully received in succession among the MPDUs transmitted in the previous frame” based on Ack-win Begin and Ack-win End. In Gubbi, however, Ack-win Begin represents the stream sequence number of the last nacked MAC frame. That is, Ack win Begin represents the last non-acknowledged sequence number of the MAC frame. Also, Ack win End represents the stream sequence number of the most recently received MAC frame. What Gubbi is disclosing is the first non-acknowledged sequence number and the last received sequence number. This is not equivalent to the first successfully received and last successfully received sequence number received in succession in the previous frame.

Even if Gubbi is combined Tanabe, the resulting invention would fail to teach or suggest that the ACK message includes a payload field representing the first and last sequence numbers successfully received in succession among the MPDUs transmitted in the previous frame. Further, the assertions made in the Office Action on page 4 that lead to a conclusion of obviousness are not explicit and the basic requirements of an articulated rationale under MPEP 2143 cannot be found. Additionally, since neither Tanabe, Gubbi, and therefore, nor the combination of the two, teach, disclose or suggest all the limitations of Applicant's amended

claim 1, as listed above, Applicant's amended claim 1 is not obvious over Tanabe in view of Gubbi since a *prima facie* case of obviousness has not been met under MPEP §2142. And, the claim that directly depends from amended claim 1, namely claim 4, would also not be obvious over Tanabe in view of Gubbi for the same reason.

Accordingly, withdrawal of the 35 U.S.C. § 103(a) rejections for claims 3 and 4 are respectfully requested.

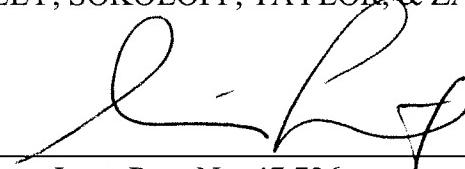
CONCLUSION

In view of the foregoing, it is submitted that claims 1-2 and 4-14 patentably define the subject invention over the cited references of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly, extension of time fees.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN LLP

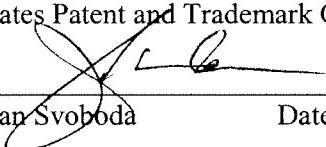
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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below to the United States Patent and Trademark Office.


Jean Svoboda

Date: November 28, 2007